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Supreme Court, U.S.
NOV 4 - 2010

No. 10-455

IN THE

Supreme Court of the United States

RORY M. WALSH, Individually, and as Natural Guardian of C.R.W., a minor, and as Natural Guardian of S.J.W., a minor,

Petitioners,

v.

Dr. Robert Krantz, the Dallastown Area School District, Judy Keeney, et al

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Third Circuit panel, in denying petitioner/appellant's post-decision "motion for summary action," properly concluded that Rule 30(a)(2) permitted it to refer to, or rely upon, a document in the district court record not included by appellant in the appendix.

PARTIES TO THE PROCEEDINGS

In addition to the Respondents named in the caption, the following additional Respondents are Kelly Heisey, Unknown Dallastown Staff Member, Dr. Stewart Weinberg, Dallastown Area School District, Cathy Stone and Greg Anderson.

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CONCISE STATEMENT OF THE CASE

Respondents submit this response to fulfill their obligation under Supreme Court Rule 15 to "point out in the brief in opposition, and not later, any perceived misstatement made in the petition." *Id.* The response addresses Walsh's third issue, which asserts that respondents were involved in manipulating his "filings" and "suppressing evidence and planting evidence in the 3rd Circuit." Petition at ii.

The Third Circuit issued its order and opinion affirming the district court's decision on July 12, 2010. Petitioner Walsh filed a "motion for summary relief" on July 21, 2010, arguing that the panel had improperly relied on evidence which was not in the appendix he had submitted, specifically referring to an email defendant Krantz, sent to Walsh on March 29, 2006 at 2:11 p.m. The panel denied the motion in an August 4, 2010 order that is not included in petitioner's appendix. [M.D.Pa. docket 10-1217, filed August 5, 2010, document 003110241885] The August 4th order, denying Walsh's "motion for summary relief," cited Fed.R.App. 30(a)(2), and provided Walsh with the text of that rule which states that the panel and parties are permitted to rely on "parts of the record...even though not included in the appendix." [Order] The order identified one place where the email could be found in the record: document no. 33, Exhibit C. This particular reference is to an exhibit Walsh attached to his July 2007 brief that opposed defendants' motion to dismiss.

Other references to the this email could have been identified as well. Walsh referred to this document when

deposed, reading a portion of the email's text into the record. And when he was questioned further on the subject of this second March 29, 2006, 2:11 PM email from defendant Krantz, Walsh agreed he was relying on it to establish that Krantz had eavesdropped on his call to his son. [District court docket at 182-1(Dallastown motion for summary judgment, exhibit A - Walsh December 2, 2008 deposition transcript at 31:25 to 32:5; 32:13-16)] The email was also identified by Walsh, and attached as an exhibit to his eighty-two page statement of facts in support of the motion for summary judgment. [(Middle District Docket 186, ¶25, and 186-2, Exhibit u)] The document was also included as an exhibit to defendants Dallastown and Krantz's motion for summary judgment filed on March 31, 2009. [Middle District docket 182, Exhibit C] The magistrate's report and recommendation referred to this email at page 10, (citing to Docket 191-2 at 14). The email is cited elsewhere in filings in the district court, and was discussed in defendants/appellees' brief.

ARGUMENT

The petition for writ of certiorari fails to present a question within the Court's certiorari jurisdiction and must be denied. As explained in Supreme Court Rule 10, a petition will only be granted for compelling reasons, and none have been presented in this petition. The court of appeals opinion, and the thorough and detailed decisions of the district court, sufficiently address the substantive issues Walsh attempts to raise in this petition. His petition does not suggest that the court of appeals decision conflicts with a decision of another court of appeals, or that it decided some important federal

question that conflicts with the decision of a state court of last resort. Supreme Court Rule 10(a).

Nor does Walsh identify any other compelling reason to grant his petition. While Walsh's third question, and last argument, apparently asks this Court to exercise its supervisory powers to address allegations that the court of appeals permitted respondents' counsel to "plant evidence" and manipulate Walsh's filings to make it appear that he had submitted and relied on a particular piece of evidence — an email sent to him by defendant Krantz on March 29, 2006 at 2:11PM — the record plainly belies this extraordinary claim.

To the extent Walsh argues that the court of appeals considered a document, in the record, but not included in the appendix he submitted, the panel was, of course, free to consider any part of the record, whether or not included in the appendix. F.R.A.P. 30(a)(2). ("Parts of the record may be relied on by the court or the parties even though not included in the appendix."); *Selkridge v. United of Omaha Life Ins. Co.*, 360 F.3d 155, 160 (3rd Cir. 2004).

Nor can Walsh support his claim that the court of appeals overlooked, or participated in, respondents' counsel's alleged manipulation of the record to make it appear that Walsh filed, or that he relied on the second of two emails sent by defendant Krantz to Walsh on March 29, 2006. The court of appeals, in denying Walsh's motion for summary relief on August 4, 2010, correctly pointed out that Walsh placed this document in the record at the time he responded to defendants' motion to dismiss. [District court docket 33, exhibit C] As

explained in the statement of the case, above, the document was also placed in the record by Walsh on other occasions, and he testified that he was relying on this particular email as proof of eavesdropping on his conversation with his son.

CONCLUSION

For the reasons stated by the court of appeals in affirming the orders of the district court, dismissing and granting judgment for respondents on Walsh's claims, the decisions of the district court, and other reasons apparent from Walsh's petition, the petition for writ of certiorari must be denied.

Respectfully submitted,

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